

AMENDED IN SENATE APRIL 9, 2014

AMENDED IN SENATE MARCH 17, 2014

**SENATE BILL**

**No. 982**

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**Introduced by Senator Huff**

**(Coauthors: Senators Berryhill and Lieu)**

*(Coauthors: Assembly Members Chávez, Olsen, and Wagner)*

February 11, 2014

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An act to amend Sections 261.9 and 647 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

SB 982, as amended, Huff. Prostitution: minors: punishment.

Existing law provides that a person who solicits or agrees to engage in or engages in any act of prostitution is guilty of disorderly conduct, a misdemeanor, punishable by imprisonment in a county jail for no more than 6 months, by a fine not exceeding \$1,000, or by both that fine and imprisonment.

This bill would, ~~notwithstanding the above provisions,~~ *instead,* make it either a misdemeanor, punishable by not more than one year in a county jail, or a felony, punishable in a county jail for 16 months or 2 or 3 years, ~~the first time a person seeks to procure or procures the sexual services of a prostitute in violation of the above provisions if the prostitute~~ *for a person who, in violation of the above provisions, solicits an act of prostitution from, or engages in an act of prostitution with, a person who is under 18 years of age and the defendant knows or should know that the prostitute person is under 18 years of age. The bill would make a second or subsequent violation of that offense a felony, punishable in a county jail for 16 months or 2 or 3 years. These provisions would apply only to the person who exchanged, or offered*

*to exchange, anything of value with the other person in return for a lewd act.* By increasing the punishment for a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 261.9 of the Penal Code is amended to  
2 read:

3 261.9. (a) A person who ~~seeks to procure or does procure the~~  
4 ~~sexual services of a prostitute~~, in violation of subdivision (b) of  
5 Section 647, ~~if the prostitute is~~ *solicits an act of prostitution from,*  
6 *or engages in an act of prostitution with, a person* under 18 years  
7 of age and the defendant knows or reasonably should know the  
8 ~~prostitute~~ *other person* is under 18 years of age, shall be punished  
9 as follows:

10 (1) For the first conviction, either as a misdemeanor or as a  
11 felony punishable by imprisonment pursuant to subdivision (h) of  
12 Section 1170.

13 (2) For the second or subsequent conviction, as a felony  
14 punishable by imprisonment pursuant to subdivision (h) of Section  
15 1170.

16 (b) Any person ~~convicted of seeking to procure or procuring~~  
17 ~~the sexual services of a prostitute who~~, in violation of subdivision  
18 (b) of Section 647, ~~if the prostitute~~ *solicits an act of prostitution*  
19 *from, or engages in an act of prostitution with, a person who* is  
20 under 18 years of age, shall be ordered by the court, in addition to  
21 any other penalty or fine imposed, to pay an additional fine in an  
22 amount not to exceed twenty-five thousand dollars (\$25,000).

23 (c) Every fine imposed and collected pursuant to this section  
24 shall, upon appropriation by the Legislature, be available to fund  
25 programs and services for commercially sexually exploited minors  
26 in the counties where the underlying offenses are committed.

1     *(d) This section applies only to the person who exchanged, or*  
2     *offered to exchange, anything of value with the other person in*  
3     *return for a lewd act.*

4     SEC. 2. Section 647 of the Penal Code is amended to read:

5     647. Except as provided in subdivision (a) of Section 261.9  
6     and subdivision (l), every person who commits any of the following  
7     acts is guilty of disorderly conduct, a misdemeanor:

8     (a) Who solicits anyone to engage in or who engages in lewd  
9     or dissolute conduct in ~~any~~ a public place or in ~~any~~ a place open  
10    to the public or exposed to public view.

11    (b) Who solicits or who agrees to engage in or who engages in  
12    ~~any~~ an act of prostitution. A person agrees to engage in an act of  
13    prostitution when, with specific intent to so engage, he or she  
14    manifests an acceptance of an offer or solicitation to so engage,  
15    regardless of whether the offer or solicitation was made by a person  
16    who also possessed the specific intent to engage in prostitution.  
17    An agreement to engage in an act of prostitution shall not constitute  
18    a violation of this subdivision unless some act, in addition to the  
19    agreement, is done within this state in furtherance of the  
20    commission of an act of prostitution by the person agreeing to  
21    engage in that act. As used in this subdivision, "prostitution"  
22    includes any lewd act between persons for money or other  
23    consideration.

24    (c) Who accosts other persons in ~~any~~ a public place or in ~~any~~  
25    a place open to the public for the purpose of begging or soliciting  
26    alms.

27    (d) Who loiters in or about ~~any~~ a toilet open to the public for  
28    the purpose of engaging in or soliciting ~~any~~ a lewd or lascivious  
29    or ~~any~~ an unlawful act.

30    (e) Who lodges in ~~any~~ a building, structure, vehicle, or place,  
31    whether public or private, without the permission of the owner or  
32    person entitled to the possession or in control of it.

33    (f) Who is found in ~~any~~ a public place under the influence of  
34    intoxicating liquor, ~~any~~ a drug, controlled substance, toluene, or  
35    any combination of ~~any~~ intoxicating liquor, drug, controlled  
36    substance, or toluene, in a condition that he or she is unable to  
37    exercise care for his or her own safety or the safety of others, or  
38    by reason of his or her being under the influence of intoxicating  
39    liquor, ~~any~~ a drug, controlled substance, toluene, or ~~any~~ a  
40    combination of ~~any~~ intoxicating liquor, drug, or toluene, interferes

1 with or obstructs or prevents the free use of ~~any~~ a street, sidewalk,  
2 or other public way.

3 (g) When a person has violated subdivision (f), a peace officer,  
4 if he or she is reasonably able to do so, shall place the person, or  
5 cause him or her to be placed, in civil protective custody. The  
6 person shall be taken to a facility, designated pursuant to Section  
7 5170 of the Welfare and Institutions Code, for the 72-hour  
8 treatment and evaluation of inebriates. A peace officer may place  
9 a person in civil protective custody with that kind and degree of  
10 force that would be lawful were he or she effecting an arrest for a  
11 misdemeanor without a warrant. A person who has been placed  
12 in civil protective custody shall not thereafter be subject to any  
13 criminal prosecution or juvenile court proceeding based on the  
14 facts giving rise to this placement. This subdivision shall not apply  
15 to the following persons:

16 (1) ~~Any~~ A person who is under the influence of ~~any~~ a drug, or  
17 under the combined influence of intoxicating liquor and ~~any~~ a  
18 drug.

19 (2) ~~Any~~ A person who a peace officer has probable cause to  
20 believe has committed any felony, or who has committed ~~any~~ a  
21 misdemeanor in addition to subdivision (f).

22 (3) ~~Any~~ A person who a peace officer in good faith believes  
23 will attempt escape or will be unreasonably difficult for medical  
24 personnel to control.

25 (h) Who loiters, prowls, or wanders upon the private property  
26 of another, at any time, without visible or lawful business with the  
27 owner or occupant. As used in this subdivision, “loiter” means to  
28 delay or linger without a lawful purpose for being on the property  
29 and for the purpose of committing a crime as opportunity may be  
30 discovered.

31 (i) Who, while loitering, prowling, or wandering upon the private  
32 property of another, at any time, peeks in the door or window of  
33 ~~any~~ an inhabited building or structure, without visible or lawful  
34 business with the owner or occupant.

35 (j) (1) ~~Any~~ A person who looks through a hole or opening, into,  
36 or otherwise views, by means of any instrumentality, including,  
37 but not limited to, a periscope, telescope, binoculars, camera,  
38 motion picture camera, camcorder, or mobile phone, the interior  
39 of a bedroom, bathroom, changing room, fitting room, dressing  
40 room, or tanning booth, or the interior of any other area in which

1 the occupant has a reasonable expectation of privacy, with the  
2 intent to invade the privacy of a person or persons inside. This  
3 subdivision shall not apply to those areas of a private business  
4 used to count currency or other negotiable instruments.

5 (2) ~~Any~~A person who uses a concealed camcorder, motion  
6 picture camera, or photographic camera of any type, to secretly  
7 videotape, film, photograph, or record by electronic means, another,  
8 identifiable person under or through the clothing being worn by  
9 that other person, for the purpose of viewing the body of, or the  
10 undergarments worn by, that other person, without the consent or  
11 knowledge of that other person, with the intent to arouse, appeal  
12 to, or gratify the lust, passions, or sexual desires of that person and  
13 invade the privacy of that other person, under circumstances in  
14 which the other person has a reasonable expectation of privacy.

15 (3) (A) ~~Any~~A person who uses a concealed camcorder, motion  
16 picture camera, or photographic camera of any type, to secretly  
17 videotape, film, photograph, or record by electronic means, another,  
18 identifiable person who may be in a state of full or partial undress,  
19 for the purpose of viewing the body of, or the undergarments worn  
20 by, that other person, without the consent or knowledge of that  
21 other person, in the interior of a bedroom, bathroom, changing  
22 room, fitting room, dressing room, or tanning booth, or the interior  
23 of any other area in which that other person has a reasonable  
24 expectation of privacy, with the intent to invade the privacy of that  
25 other person.

26 (B) Neither of the following is a defense to the crime specified  
27 in this paragraph:

28 (i) The defendant was a cohabitant, landlord, tenant, cotenant,  
29 employer, employee, or business partner or associate of the victim,  
30 or an agent of any of these.

31 (ii) The victim was not in a state of full or partial undress.

32 (4) (A) ~~Any~~A person who photographs or records by any means  
33 the image of the intimate body part or parts of another identifiable  
34 person, under circumstances where the parties agree or understand  
35 that the image shall remain private, and the person subsequently  
36 distributes the image taken, with the intent to cause serious  
37 emotional distress, and the depicted person suffers serious  
38 emotional distress.

39 (B) As used in this paragraph, intimate body part means any  
40 portion of the genitals, and in the case of a female, also includes

1 any portion of the breasts below the top of the areola, that is either  
2 uncovered or visible through less than fully opaque clothing.

3 (C) Nothing in this subdivision precludes punishment under  
4 any section of law providing for greater punishment.

5 (k) In~~any~~ *an* accusatory pleading charging a violation of  
6 subdivision (b), if the defendant has been once previously convicted  
7 of a violation of that subdivision, the previous conviction shall be  
8 charged in the accusatory pleading. If the previous conviction is  
9 found to be true by the jury, upon a jury trial, or by the court, upon  
10 a court trial, or is admitted by the defendant, the defendant shall  
11 be imprisoned in a county jail for a period of not less than 45 days  
12 and shall not be eligible for release upon completion of sentence,  
13 on probation, on parole, on work furlough or work release, or on  
14 any other basis until he or she has served a period of not less than  
15 45 days in a county jail. In all cases in which probation is granted,  
16 the court shall require as a condition thereof that the person be  
17 confined in a county jail for at least 45 days. In no event does the  
18 court have the power to absolve a person who violates this  
19 subdivision from the obligation of spending at least 45 days in  
20 confinement in a county jail.

21 In~~any~~ *an* accusatory pleading charging a violation of subdivision  
22 (b), if the defendant has been previously convicted two or more  
23 times of a violation of that subdivision, each of these previous  
24 convictions shall be charged in the accusatory pleading. If two or  
25 more of these previous convictions are found to be true by the jury,  
26 upon a jury trial, or by the court, upon a court trial, or are admitted  
27 by the defendant, the defendant shall be imprisoned in a county  
28 jail for a period of not less than 90 days and shall not be eligible  
29 for release upon completion of sentence, on probation, on parole,  
30 on work furlough or work release, or on any other basis until he  
31 or she has served a period of not less than 90 days in a county jail.  
32 In all cases in which probation is granted, the court shall require  
33 as a condition thereof that the person be confined in a county jail  
34 for at least 90 days. In no event does the court have the power to  
35 absolve a person who violates this subdivision from the obligation  
36 of spending at least 90 days in confinement in a county jail.

37 In addition to any punishment prescribed by this section, a court  
38 may suspend, for not more than 30 days, the privilege of the person  
39 to operate a motor vehicle pursuant to Section 13201.5 of the  
40 Vehicle Code for~~any~~ *a* violation of subdivision (b) that was

1 committed within 1,000 feet of a private residence and with the  
2 use of a vehicle. In lieu of the suspension, the court may order a  
3 person's privilege to operate a motor vehicle restricted, for not  
4 more than six months, to necessary travel to and from the person's  
5 place of employment or education. If driving a motor vehicle is  
6 necessary to perform the duties of the person's employment, the  
7 court may also allow the person to drive in that person's scope of  
8 employment.

9 (l) (1) A second or subsequent violation of subdivision (j) is  
10 punishable by imprisonment in a county jail not exceeding one  
11 year, or by a fine not exceeding two thousand dollars (\$2,000), or  
12 by both that fine and imprisonment.

13 (2) If the victim of a violation of subdivision (j) was a minor at  
14 the time of the offense, the violation is punishable by imprisonment  
15 in a county jail not exceeding one year, or by a fine not exceeding  
16 two thousand dollars (\$2,000), or by both that fine and  
17 imprisonment.

18 SEC. 3. No reimbursement is required by this act pursuant to  
19 Section 6 of Article XIII B of the California Constitution because  
20 the only costs that may be incurred by a local agency or school  
21 district will be incurred because this act creates a new crime or  
22 infraction, eliminates a crime or infraction, or changes the penalty  
23 for a crime or infraction, within the meaning of Section 17556 of  
24 the Government Code, or changes the definition of a crime within  
25 the meaning of Section 6 of Article XIII B of the California  
26 Constitution.